

DEC 9 1967

JOHN F. DAVIS, CLERK

IN THE  
**SUPREME COURT OF THE UNITED STATES.**

No. 33 Original.

THE STATE OF ARKANSAS,  
Plaintiff,

vs.

THE STATE OF TENNESSEE,  
Defendant.

**BRIEF**

**Of State of Tennessee in Opposition to Motion of State  
of Arkansas for Leave to File Complaint.**

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The State of Tennessee, by its Attorney General, George F. McCanless, for reply to the Motion for Leave to File Complaint, which has been filed herein by the State of Arkansas, respectfully states that it opposes said Motion upon the following grounds:

(1) The basic controversy involved in the proposed suit is one between private individuals. Such actions are not cognizable as original actions in this Court.

(2) The issues involved in such controversy have been decided by the Courts of the State of Tennessee.

(3) Any questions relating to the sovereign rights of the States of Tennessee and Arkansas would, at most, be minimal and, if jurisdiction were taken by this Court the relief would not be determinative of issues of any magnitude.

### **Private Litigation.**

The real controversy underlying the proposed litigation consists of a dispute between private parties as to title to some 5000 acres of land. In this connection, Defendant avers that the proposed dispute between the states relating to the boundary line is collateral to the real dispute between private individuals as to title to said lands; and the relief sought by way of establishing the boundary line as prayed for by the State of Arkansas is in aid of private litigation.

As will be noted below, the Courts of Tennessee have ruled adversely to the claims of citizens of Arkansas relating to the very lands described in the complaint sought to be filed. The relief sought in the complaint, if granted, would have the effect of nullifying the decisions of the Tennessee Courts and of sustaining the claims of the private Arkansas citizens to the disputed lands.

In determining whether the interest being litigated is an appropriate one for exercise of original jurisdiction, the Supreme Court looks behind and beyond the legal form in which the claim of the state is pressed, to determine whether in substance the claim is that of the state and whether the state is in fact the real party in interest.

**State of Arkansas v. State of Texas et al.**, 346 U. S. 368, 74 S. Ct. 109, 98 L. Ed. 80 (1953);

**Oklahoma ex rel. Johnson v. Cook**, 304 U. S. 387, 58 S. Ct. 954, 82 L. Ed. 1416 (1938);

**Louisiana v. Texas**, 176 U. S. 1, 20 S. Ct. 251, 44 L. Ed. 347 (1900);

**Commonwealth of Massachusetts v. State of Missouri et al.**, 308 U. S. 1, 60 S. Ct. 39, 84 L. Ed. 3 (1939).

### **History of Litigation.**

The litigation in this matter began in 1954 in the Chancery Court of Shelby County, Tennessee in an action of ejectment filed by G. I. Brown against R. H. Brakensiek, et al.

The Defendants attacked the jurisdiction of the Tennessee Courts, alleging that the lands in question were in the State of Arkansas. The Trial Court agreed and dismissed the suit. The Court of Appeals of Tennessee, in an opinion dated February 28, 1961, reported in 48 Tenn. App. 543, 349 S. W. 2d 146, reversed the Trial Court, ruled that a portion of the land was in the State of Tennessee and remanded the cause for further proceedings. **Brown v. Brakensiek**, 48 Tenn. App. 543, 349 S. W. 2d 146 (1961). Certiorari was denied by the Supreme Court of Tennessee. At the present state of the litigation, following further hearing in the Chancery Court, the Tennessee Court of Appeals, by an opinion filed September 18, 1967, ruled that all of said lands are in Tennessee and that ownership had been acquired through deeds passing title which is traceable to the State of Tennessee.

### **Magnitude of Litigation.**

The magnitude of the controversy involved and the far reaching effect on the general public of any decision to be made on the issue presented are reasonable guidelines of the propriety of this Court's taking jurisdiction in a suit between two states.

Before this Court will exercise its extraordinary power to control the conduct of one state at the suit of another, the threatened invasion of rights must be of serious magnitude and be established by clear and convincing evidence.

**New York v. New Jersey**, 256 U. S. 296, 41 S. Ct. 492, 65 L. Ed. 937 (1921);

**Missouri v. Illinois**, 200 U. S. 496, 26 S. Ct. 268, 50  
L. Ed. 572 (1906);

**Louisiana v. Mississippi**, 202 U. S. 1, 26 S. Ct. 408, 50  
L. Ed. 913 (1906).

The instant suit, proposed by the State of Arkansas, is not one of serious magnitude, involving only 5000 acres of land, mostly uncultivated. The State of Arkansas has no substantial interest in this litigation, and if relief were granted, there would be no large financial benefit to said State.

Respectfully submitted,

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